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5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 DENNIS HOF, DONALD COX and  
9 JOSEPH BURDZINSKI,

10 Plaintiffs,

11 vs.

12  
13 ANDREW “BUTCH” BORASKY, in his  
personal and official capacity as an  
14 employee of Nye County, NYE COUNTY,  
15 NEVADA, a political subdivision, DOES I-  
X and CORPORATE ROES I-X,

16 Defendants.  
17

CASE NO.: 2:18-cv-00543-GMN-NJK

**STIPULATION AND ORDER TO**  
**EXTEND TIME FOR DISPOSITIVE**  
**MOTIONS PENDING**  
**SUBSTITUTION OF SUCCESSOR**  
**IN INTEREST**

18 Defendants, ANDREW “BUTCH” BORASKY and NYE COUNTY, NEVADA,  
19 by and through their attorney of record, REBECCA BRUCH, ESQ. of ERICKSON,  
20 THORPE & SWAINSTON, LTD., and Plaintiffs DENNIS HOF, DONALD COX and  
21 JOSEPH BURDZINSKI, Plaintiffs, by and through their attorneys of record, THOMAS  
22 J. GIBSON and GIBSON LAW GROUP, hereby stipulate to extend the deadline for  
23 dispositive motions precipitated by the death of Plaintiff Dennis Hof.

24 **MEMORANDUM OF POINTS & AUTHORITIES**

25 **I. PROCEDURAL HISTORY AND CURRENT STATUS**

26 On or about March 26, 2018, this matter was removed from state court to Federal  
27 Court. *ECF No. 1.* On approximately July 10, 2018, Defendants filed a Motion for  
28 Judgment on the Pleadings. *ECF No. 13.* Plaintiffs opposed the Motion on July 24,

1 2018. *ECF No. 14*. Defendants replied on July 31, 2018. *ECF No. 15*. The motion is  
2 currently pending before this Court.

3 On approximately Monday, October 8, 2018, Mr. Hof passed away. On Tuesday,  
4 October 9, 2018, Defendants filed a Suggestion of Death in this case. *ECF No. 18*.

5 **II. LEGAL ARGUMENT**

6 FRCP 25 (a) holds as follows:

7 (1) Substitution if the Claim Is Not Extinguished. If a party dies and the claim  
8 is not extinguished, the court may order substitution of the proper party. A  
9 motion for substitution may be made by any party or by the decedent's  
10 successor or representative. If the motion is not made within 90 days after  
11 service of a statement noting the death, the action by or against the  
12 decedent must be dismissed.

13 (3) Service. A motion to substitute, together with a notice of hearing must be  
14 served on the parties as provided in Rule 5 and on nonparties as provided in  
15 Rule 4. A statement noting death must be served in the same manner.  
16 Service may be made in any judicial district.

17 *FRCP 25(a)(1) and (3)*.

18 Dispositive motions in this case are due on October 24, 2018. *ECF No. 10*.

19 Until a motion for substitution has been made and granted, the court has no  
20 authority to proceed with the deceased party's case. *See, e.g., Campbell v. State of Iowa,*  
21 *Third Judicial District Department of Correctional Services*, 702 F.3d 1140, 1141-42  
(8th Cir. 2013)(court may not proceed until proper party is substituted for deceased  
22 person).

23 While Defendants filed the Suggestion of Death on October 19, 2018, they have  
24 not yet ascertained the identity of the successor to Mr. Hof's estate, or his successor in  
25 interest to this action, if any. As soon as that information is known, the Suggestion of  
26 Death will be served on the successor and the other plaintiffs. In the meantime, the  
27 Parties stipulate to stay the current deadline for dispositive motions for 60 days to allow  
28 time for Mr. Hof's successor to be named, and substituted into this litigation if the estate  
determines it wants to continue with this case. If at the end of 60 days the matter is still

1 in limbo, the Parties may request an additional extension of time to determine if the  
2 matter is going forward, and if so, with which parties.

3 **III. CONCLUSION**

4 Based upon the foregoing, the Parties hereby stipulate and request the Court grant  
5 an extension of time to December 24, 2018, in order to file dispositive motions if any are  
6 to be forthcoming.

7 DATED this 23<sup>rd</sup> day of October, 2018.

8 ERICKSON, THORPE & SWAINSTON, LTD

9  
10 By: /s/ Rebecca Bruch  
11 REBECCA BRUCH, ESQ. (SBN7289)  
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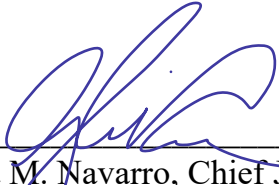
15 GIBSON LAW GROUP, PLLC

16  
17 By: /s/ Thomas J. Gibson  
18 THOMAS J. GIBSON, ESQ. (SBN3995)  
19 2340 East Calvada Blvd. #5  
20 Pahrump, Nevada 89048

21 **ORDER**

22 **IT IS SO ORDERED** that the deadline to file dispositive motions shall  
23 be extended 60 days from the current deadline of October 24, 2018.

24 **DATED** this 23 day of October, 2018.

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Gloria M. Navarro, Chief Judge  
United States District Court